

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

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ALPHONSO DUNN,

Plaintiff,

Case No.: 21-cv-17351

-against-

COMPLAINT

JAKE PARKER and Jury trial demanded
CHRONICLE BOOKS LLC,

Defendants.

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Plaintiff, Alphonso Dunn (“Dunn” or “Plaintiff”), by and through undersigned counsel, McLoughlin, O’Hara, Wagner & Kendall, LLP, as and for his Complaint against Defendants, Jake Parker (“Parker”) and Chronicle Books, LLC (“Chronicle”) (Parker and Chronicle collectively, “Defendants”), allege as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under 17 U.S.C. § 501, *et seq.* based on Chronicle’s publication in 2020 of a book entitled *Inktober All Year Long* by Parker. *Inktober All Year Long* infringes the copyrights of two books by Dunn entitled *Pen & Ink Drawing: A Simple Guide* and *Pen & Ink Drawing Workbook*, respectively published in 2015 and 2018. *Inktober All Year Long* is substantially similar to the protectable expressions in *Pen & Ink Drawing: A Simple Guide* and *Pen & Ink Drawing Workbook*. Parker has also created derivative works, such as recorded instructional videos, based on the content Dunn authored. Accordingly, Dunn brings this action.

PARTIES

2. Plaintiff Dunn is a citizen of the State of New Jersey and resides in Woodland Park, New Jersey.

3. Dunn is the author of *Pen & Ink Drawing: A Simple Guide* and *Pen & Ink Drawing Workbook*. Dunn wrote, illustrated, and designed both books. He owns registrations with the United States Copyright Office for his copyrights in *Pen & Ink Drawing: A Simple Guide* (Reg. No. TXu002061599, valid from Dec. 4, 2015) and *Pen & Ink Drawing Workbook* (Reg. No. TXu002106123, valid from July 12, 2018).

4. Upon information and belief, Defendant Parker is a citizen of the State of Arizona and resides in Gilbert, Arizona.

5. Upon information and belief, Parker is the author of *Inktober All Year Long*.

6. Upon information and belief, Defendant Chronicle is a limited liability company incorporated in the State of Delaware with its principal place of business at 680 Second Street, San Francisco, California.

7. Upon information and belief, Chronicle is the publisher of *Inktober All Year Long*.

JURISDICTION AND VENUE

8. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338(a).

9. This Court has personal jurisdiction over the Defendants, who committed an intentional act expressly aimed at this judicial district, causing harm that Defendants know is likely to be suffered in this judicial district.

10. Venue in this district is proper under 28 U.S.C. § 1391(b) in that a substantial part of the events giving rise to the within claims occurred in this judicial district.

FACTUAL BACKGROUND

11. Over the years, Dunn has amassed a large online audience for his inviting and effective art instruction, focusing on drawing in pen and ink drawing.

12. Since 2011, Dunn's YouTube videos on this subject have been viewed over 36.5 million times. Nearly 650,000 people subscribe to Dunn's YouTube channel.

13. Drawing in a general sense refers to the visual art that uses the pencil or graphite as the primary medium, whereas ink or pen and ink drawing is a specialized subtopic within the broader subject of drawing.

14. Graphite or pencil drawing is the main and most widely used form of drawing, primarily because the pencil is the drawing medium that is most widely accessible, familiar, versatile, easy to use, and erasable. These forgiving characteristic make it the preferred medium for drawing beginners.

15. Pen and ink drawing, however, is not as inviting a drawing medium as pencil, especially for beginners or anyone new to drawing, for several reasons: ink is permanent; with ink drawing you are limited to draw and render with only lines and/or dots, whereas with pencil you can create seamless gradients of tone; ink drawing requires for most learners to already have some degree of skill and competence in basic drawing; and the instruments used for ink drawing are generally perceived as specialized tools requiring their own sets of skills and techniques to be learned and mastered.

16. This explains why there is a drastically limited number of comprehensive ink drawing instruction books and learning resources available today as compared to the hundreds, if not thousands, of pencil drawing books.

17. Upon information and belief, there are less than 10 widely known comprehensive ink drawing instruction books in the art community.

18. While it is reasonable to assume that most ink drawing instruction books will inevitably address similar general concepts, skills, and techniques, it is highly unlikely that they will share striking similarity in the specific selection and expression of concepts as well as their breakdown, sequencing, organization, presentation, and even illustrations.

19. Comparing some of the commonly used ink drawing instruction books will reveal that every author, although addressing the same subject of ink drawing, has a characteristically unique approach in concept and feel to delivering the content of each book.

20. In Dunn's perspective, many of these instruction books did not provide enough adequate content that focused primarily on introducing the beginner to pen and ink drawing in a simple and engaging way – the manner that earned Dunn scores of followers on his YouTube channel.

21. In 2015, Dunn distilled his experience instructing beginners to draw in pen and ink into what is now the bestselling book *Pen & Ink Drawing: A Simple Guide*.

22. *Pen & Ink Drawing: A Simple Guide* addresses the building blocks of pen and ink drawing in a comprehensive manner; expresses these concepts in simple, clear, and succinct language accompanied by images that help illustrate and diagram the concepts – not just show finished drawings; and instructs the reader in simple, bite-sized chunks that could be understood by just about anyone with rudimentary drawing skills.

23. In addition to developing the content for *Pen & Ink Drawing: A Simple Guide* (drawing topics, techniques, and expression of concepts), Dunn put forth a tremendous effort to

design the book in an engaging manner by utilizing typography, page layout and composition, sequencing, and graphic design elements to achieve an overall theme.

24. Indeed, with a background in teaching, Dunn applies pedagogical concepts to effectively teach and share instruction and promote learning in his book.

25. In 2018, Dunn supplemented that title by publishing the now bestselling *Pen & Ink Drawing Workbook*.

26. In 2020, it came to Mr. Dunn's attention that Parker's book *Inktober All Year Long* appears to contain a multitude of similarities with Dunn's published books.

27. Upon information and belief, Chronicle first published and distributed *Inktober All Year Long* on or about September 15, 2020 and has continuously distributed the book since that time.

28. Dunn made this discovery upon noticing an Amazon.com listing for *Inktober All Year Long* and perusing the preview pages Amazon.com made available from the forthcoming book.

29. This discovery also prompted Dunn to review postings of pages from the forthcoming book available on an Instagram account created by Parker (@inktober).

30. *Inktober All Year Long* is divided into two main parts: the first part provides ink drawing instruction, and the second part provides information on "Inktober", Parker's annual online art challenge.

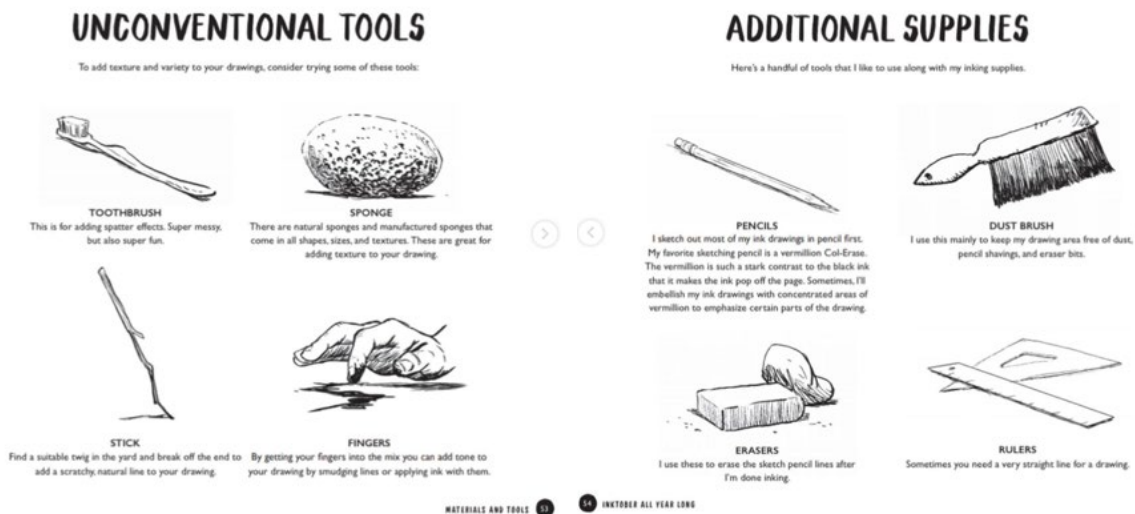
31. Of the portion of Parker's book dedicated to providing instruction on ink drawing, a significant amount bears striking similarities in concept and feel to the contents of Dunn's books.

32. *Inktober All Year Long* infringes upon the protectible elements in Dunn's books, each the result of a series of creative choices how to communicate and instruct effectively through

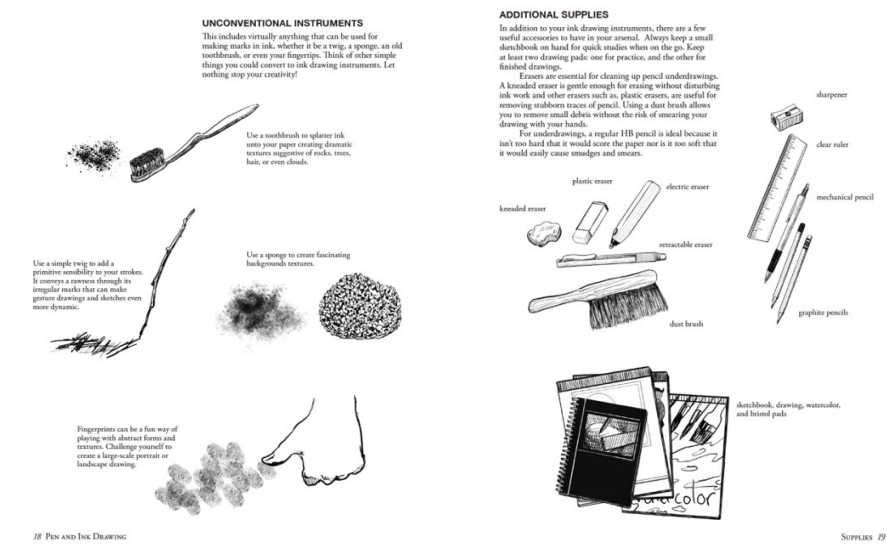
the written word and drawn images, and their combination in graphic design. Dunn's expressions are at the core of what the Copyright Act protects.

33. *Inktober All Year Long* follows nearly the exact same order as *Pen and Ink Drawing: A Simple Guide* and copies its presentation in major ways.

34. For example, this is Parker's presentation of equipment and materials on pages 53 and 54 of *Inktober All Year Long*:

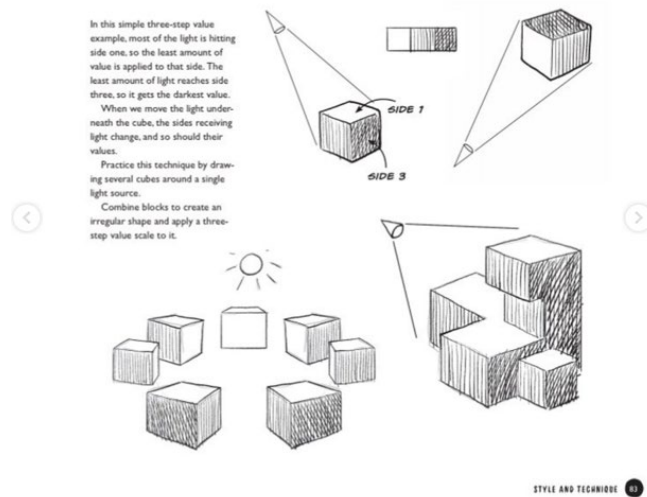


35. Below are pages 18 and 19 from Dunn's *Pen and Ink Drawing: A Simple Guide*:

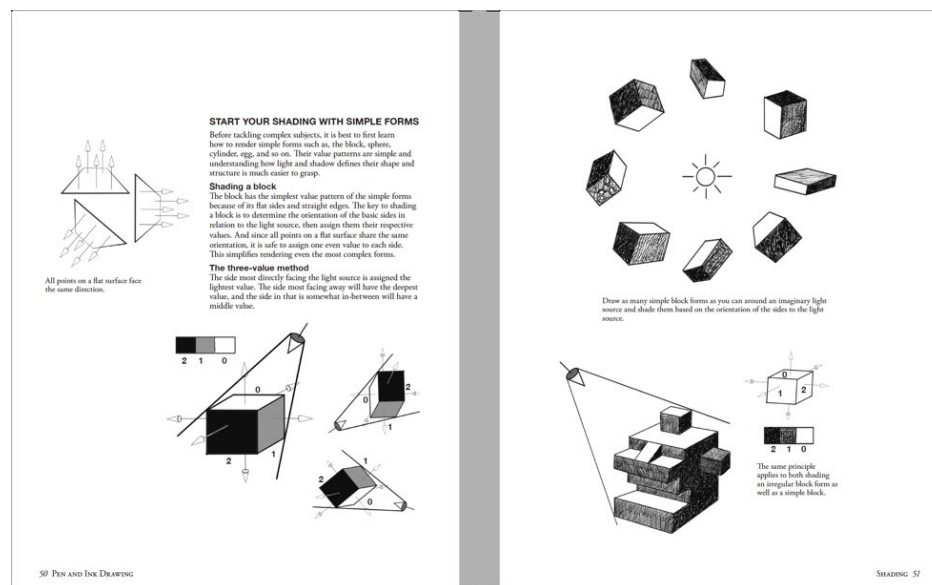


36. In the above example, Parker chose not only to feature less common equipment, but chose to depict precisely the same four objects Dunn featured: a toothbrush, sponge, twig, and fingertips, and in a manner, style, and layout that essentially duplicates Dunn's work.

37. Below is another image Parker displayed on page 83 from *Inktober All Year Long*:



38. Below are pages 50 and 51 from Dunn's *Pen and Ink Drawing: A Simple Guide*:



39. In the above example, Parker uses cubes and spheres to demonstrate ways to represent light and shadow in a substantially similar presentation as Dunn set forth in *Pen and Ink Drawing: A Simple Guide*. The text, simplified imagery, and the layout of the text and images in *Inktober All Year Long* is not readily distinguishable from Dunn's publication. Visually, there is no material differentiation between Dunn's expression and the approach taken by Parker.

40. Other examples of how *Inktober All Year Long* employs substantially similar concepts and design elements as *Pen and Ink Drawing: A Simple Guide* include:

- a. Discussing tools, pens and instruments (compare *Inktober* at 38 and *A Simple Guide* at 15);
- b. Discussing the five fundamental skills in pen and ink drawing (compare *Inktober* at 58 and *A Simple Guide* at 21);
- c. Discussing five types of stroke applications (compare *Inktober* at 68 and *A Simple Guide* at 30); and
- d. Discussing various elements to create texture (compare *Inktober* at 90-3 and *A Simple Guide* at 76-88).

41. Authors instruct on pen and ink drawing tools and materials in multiple ways. Dunn's work, however, is not the result of restating standard methods or formulae, but is his original expression born from his creativity.

42. In the above examples, however, Parker lifts the content, concept, and copyright-protected elements from Dunn, so as to replace his work.

43. The similarities between the *Inktober All Year Long* and *Pen & Ink Drawing: A Simple Guide* and *Pen & Ink Drawing Workbook* are numerous and far-reaching, ranging from

overarching similarities in the books' overall layouts and structures to near-verbatim lifting of phrases, exercises, and illustrated elements from Dunn's books.

44. Given Dunn's prominence in the field and the popularity of his books, it is reasonable to infer that Parker intentionally violated Dunn's copyright to heighten the quality and appeal of *Inktober All Year Long*.

45. On August 26, 2020, Dunn posted a video on his YouTube channel recounting this discovery of Parker's plagiarism and infringement and reviewing the similarities between his work and the content currently available from *Inktober All Year Long* prior to its publication.¹

46. Dunn has found many supporters online, who believe that Parker has committed plagiarism and infringed on Dunn's copyrighted works.

47. On Twitter, beginning on August 27, Chronicle Books publicly and repeatedly acknowledged that it was aware of Dunn's video and claimed by tweeting messages in response to numerous tweets concerning the infringement. On that platform, Chronicle Books stated that it was "taking the matter very seriously" and held the release of *Inktober All Year Long* while it investigated the claims.²

48. In September 2020, counsel for Dunn wrote to counsel for Parker and Chronicle, placing them on notice of such actionable infringement.

49. While Chronicle claimed it held the release of *Inktober All Year Long* in August 2020, as of December 2020, the book was still available for pre-release purchase from numerous

¹ See YouTube video posted on August 26, 2020 (<https://www.youtube.com/watch?v=bG3ENcAdWBM>).

² See tweet dated August 28, 2020 from the @ChronicleBooks Twitter account (<https://twitter.com/ChronicleBooks/status/1299394332374437890?s=20>).

online retail vendors such as Amazon, Barnes & Noble, and Walmart, among many others, and several of these vendors' websites displayed the book's infringing content.

50. For instance, in or about November 2020, Amazon notified customers who pre-ordered *Inktober All Year Long* that the book shipped and would be delivered to those customers.

51. Upon information and belief, Amazon collected payment for and delivered copies of the *Inktober All Year Long* book to third-party customers, which infringes upon Dunn's copyrights in *Pen & Ink Drawing: A Simple Guide* and *Pen & Ink Drawing Workbook*.

52. Upon information and belief, Chronicle was informed that Amazon accepted payment from and delivered copies of the book to its customers.

53. Chronicle was able to prevent injuries to Dunn arising from the infringing content and failed to do so even after Dunn and the public brought such to Chronicle's attention.

54. Furthermore, Chronicle is still promoting *Inktober All Year Long* on its Twitter account, providing an image of infringing content and a link to a webpage at <https://inktober.com/inktoberbook> that contains more images of the book's infringing content.³

55. Moreover, in his videotaped instruction, "How to Ink 2.0", Parker further infringes upon Dunn's registered copyrights in *Pen & Ink Drawing: A Simple Guide* and *Pen & Ink Drawing Workbook*.

56. Most this course's content is taken directly from Dunn's published works, including without limitation, its introduction and segments entitled "Strokes" and "Texture."

³ See tweet at <https://twitter.com/ChronicleBooks/status/1285265850203877378?s=20>, dated July 20, 2020 from @ChronicleBooks Twitter account, accessed on September 2, 2020.

57. Parker does not have authorization to use Dunn's work as his own. Dunn holds the exclusive right to create derivative works, such as recorded instructional videos, based on content Dunn authored.

AS AND FOR A FIRST CAUSE OF ACTION
(Copyright Infringement Against All Defendants)
(17 U.S.C. §§ 106, 501)

58. Plaintiff repeats and realleges the allegations contained in paragraphs 1-57 of this Complaint as though fully set forth herein.

59. Plaintiff has exclusive rights to the copyrighted works, *Pen & Ink Drawing: A Simple Guide* and *Pen & Ink Drawing Workbook*.

60. The above-described conduct by Defendants constitutes willful copyright infringement of such works under the Copyright Act.

61. As a result of the above-described conduct by Defendants, Plaintiff has been damaged in an amount to be proven at trial.

62. By reason of the copyright infringement described above, Plaintiff is entitled to recover Defendants' profits to the extent the same are not included as part of Plaintiff's damages.

63. In the alternative, at the election of Plaintiff, Plaintiff is entitled to recover from Defendants statutory damages up to \$150,000.00 per copyright infringed for Defendants' willful copyright infringement, plus attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

1. for an Order enjoining Defendants, their officers, agents, employees, and those acting in concert with them, temporarily during the pendency of this action and permanently thereafter from infringing, or contributing to or participating in the infringement by others

Plaintiff's copyrights in *Pen & Ink Drawing: A Simple Guide* and *Pen & Ink Drawing Workbook* or acting in concert with, aiding and abetting others to infringe said copyrights in any way;

2. that Defendants be required to account for and pay Plaintiff the actual damages suffered by Plaintiff as a result of the infringement and any profits of the Defendants attributable to the infringement of Plaintiff's copyrights or exclusive rights under such copyrights and to pay damages to Plaintiff as shall appear just and proper within the provisions of the Copyright Act, or, in the alternative, at Plaintiff's election, statutory damages for infringement of each separate copyright as set forth in 17 U.S.C. § 504;

3. for an award of attorneys' fees and costs pursuant to 17 U.S.C. § 505 or as otherwise provided by law;

4. for an award of pre-judgment interest and post-judgment interest in the maximum amount permitted by law; and

5. for such other and further relief as the Court deems just and proper.

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury on all issues so triable.

Dated: New York, New York
September 22, 2021

Respectfully submitted,

MCLOUGHLIN, O'HARA, WAGNER &
KENDALL, LLP

By: */s/ Daniel M. O'Hara*

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